

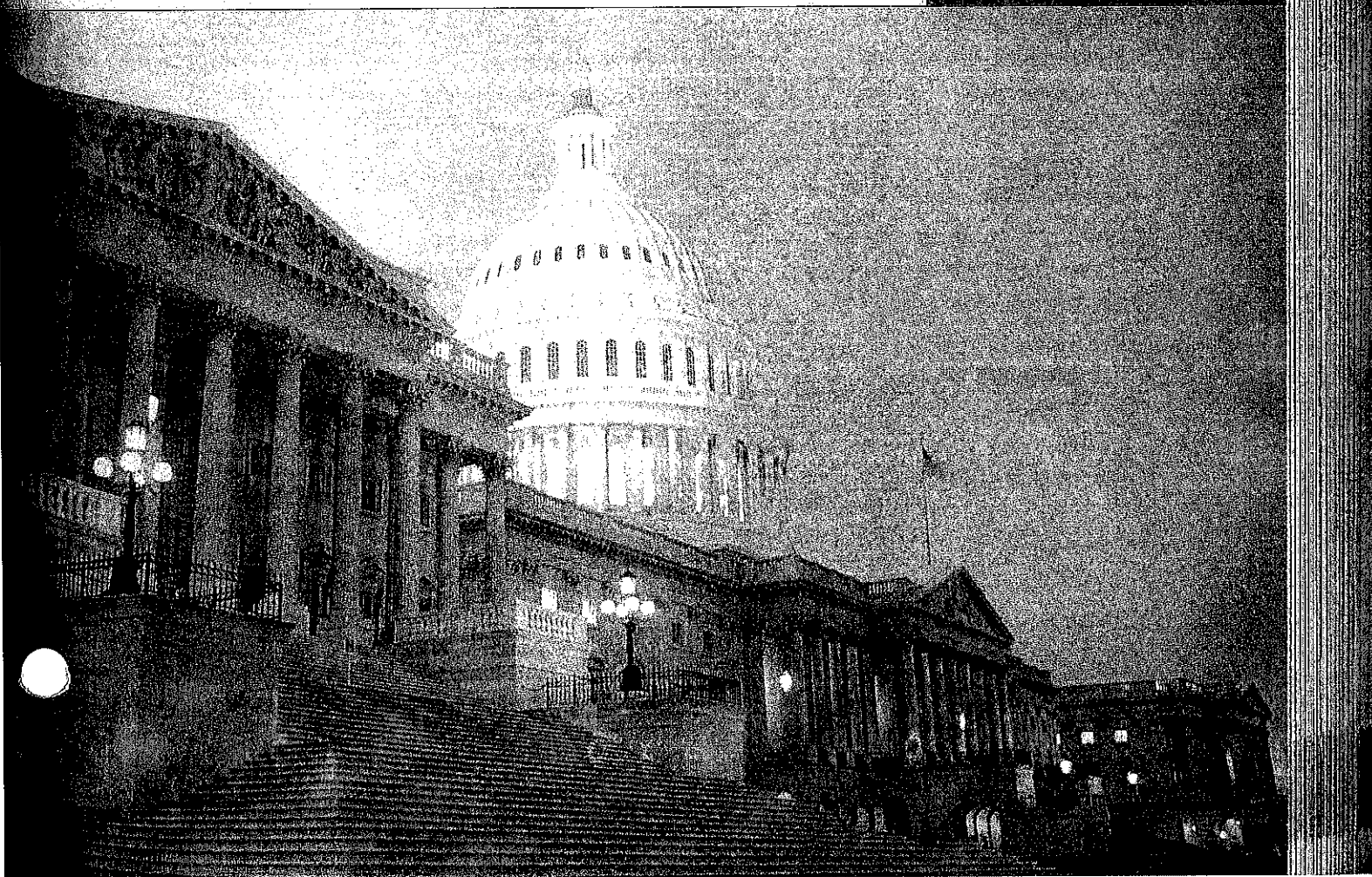
# How did the Framers resolve the conflict about the powers of the legislative branch?

## LESSON PURPOSE

One problem facing the Framers at the Philadelphia Convention was how much power to give to the legislative branch. In this lesson you will learn about the debates that the Framers had concerning which powers to delegate to Congress.

When you finish the lesson, you should be able to explain the powers that the Constitution gives Congress.

# 15



## TERMS TO UNDERSTAND



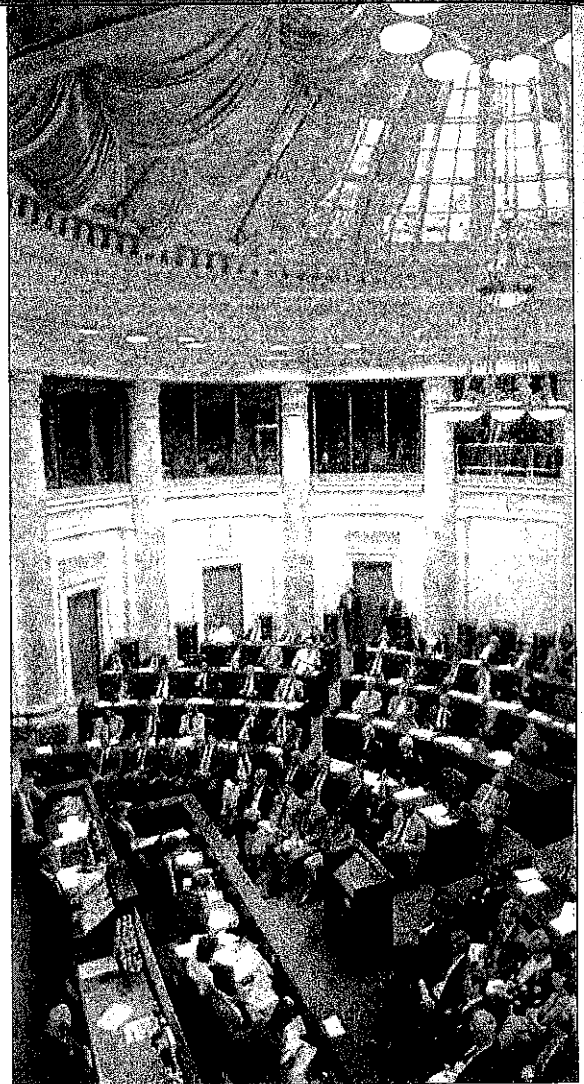
bill of attainder  
enumerated powers  
ex post facto law  
general welfare clause  
necessary and proper clause  
unconstitutional  
writ of habeas corpus

### How much power should Congress have?

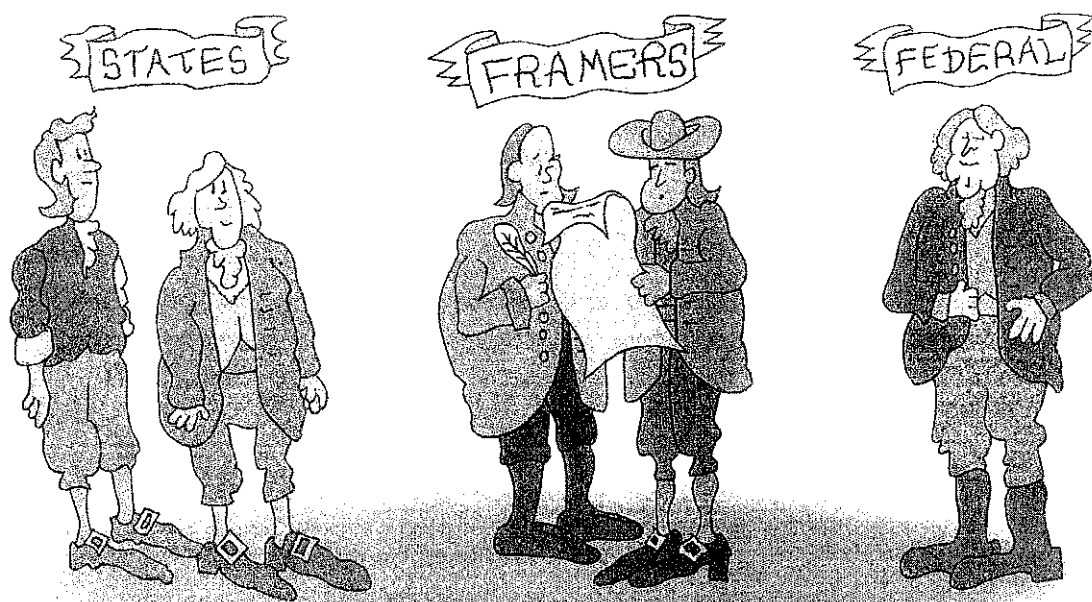
Under the Articles of Confederation, Congress was unable to deal with the trade and economic problems of the country. More importantly, Congress was not strong enough to control the actions of state governments. The Framers were convinced that the state legislatures were passing laws that violated the property rights of many citizens.

A basic problem with the Articles of Confederation was that Congress did not have the power to act directly on the people. When Congress passed laws, it had to depend on the states to enforce them. Congress could not raise taxes to support itself; it could only ask the states for money. Many states ignored congressional requests for funds.

Most of the Framers agreed that there was a need for a stronger national government. There were still some areas of disagreement, however. The American experience with the British government had caused many of the Framers to be suspicious of a central government and executive power.



*Why did some Framers believe that the state governments had too much power under the Articles of Confederation? Why did some Framers believe that there should be a strong national government?*



*How did the Framers solve the problem of distributing power between the state governments and the national government?*

The compromises about representation and slavery reduced resistance to increasing the power of the national government. The delegates, however, still disagreed about how much power to give to each of the three branches of the national government. The problem facing the Framers was how to create a national government that was strong enough to protect the rights of the people, and yet not so strong that it would endanger those rights.

## **How should the Constitution be written to give power to Congress?**

James Madison argued that the new Congress should keep the powers that it had under the Articles of Confederation. He also wanted Congress to make the laws that the state legislatures were prevented from making. He thought that Congress should also be given the power to reject or turn down laws made by state legislatures.

Madison's recommendations would have given the national government great power over the states and the people. To give all this power to the national government meant that the new constitution would have to be written in very general language. For example, the constitution might say, "Congress shall have the power to make all laws that are necessary."

Many of the Framers disagreed with Madison. They saw a problem with general language in the new constitution. General language could be understood to mean that government was given the power to do almost anything it wanted to do. It does not provide a good way to limit the powers of government.

Many delegates also opposed giving Congress the power to veto laws made by state legislatures. Under British rule, royal governors and Parliament had vetoed acts of the colonial legislatures. The Framers did not want to give this power to Congress.

An alternative was to write the new constitution in very specific language.



Specific language meant writing down exactly what powers Congress would have. For example, "Congress shall have the power to collect taxes." The Framers wanted a government of enumerated powers. **Enumerated powers** are powers that are specifically listed in a constitution. The problem with enumerated powers was that a constitution might leave out important powers needed by Congress to deal with unforeseen situations.

The solution was to use both general and specific language. The new constitution would give specific powers to Congress and place limitations on these powers. It would also include two general clauses that would give Congress the power to deal with unexpected situations.

## What are the enumerated powers of Congress?

Article I deals with the legislative branch. Article I alone makes up more than half of the Constitution. It shows just how important the legislative branch was to the Framers.

Article I, Section 8 includes seventeen enumerated powers. Some of these powers give Congress the right to

- impose and collect taxes and duties
- borrow money
- regulate commerce with foreign nations and among the states
- coin money
- establish post offices
- declare war
- raise and support an army and navy



*Should the federal government regulate postal services? Why or why not?*

## What are the general powers of Congress?

Article I, Section 8 also includes two general statements of power given to Congress. These are the power of Congress to

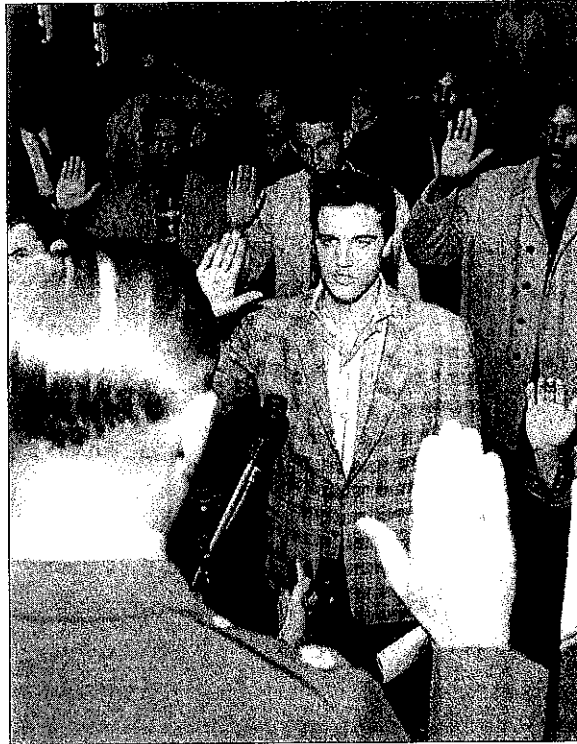
- “provide for the common Defense and general Welfare [common good] of the United States.” This is called the **general welfare clause**.
- “make all Laws which shall be necessary and proper” for carrying out the other powers that the Constitution grants to Congress. This is called the **necessary and proper clause**. For example, under the enumerated powers, Congress has the power to raise and support an army. To exercise this power, it might be necessary and proper that Congress pass a law requiring citizens to serve in the armed forces.

Neither of these general clauses caused any disagreements at the convention. They did cause strong disagreements in the states about whether to approve the Constitution. Both clauses were the source of conflicts in the early years of the new government. You will learn more about these conflicts in later lessons.

## What limits are there on the powers of Congress?

The Constitution includes several limits on the powers of Congress. Article I, Section 9 prohibits Congress from

- banning the slave trade before 1808
- suspending the privilege of the writ of **habeas corpus** except in



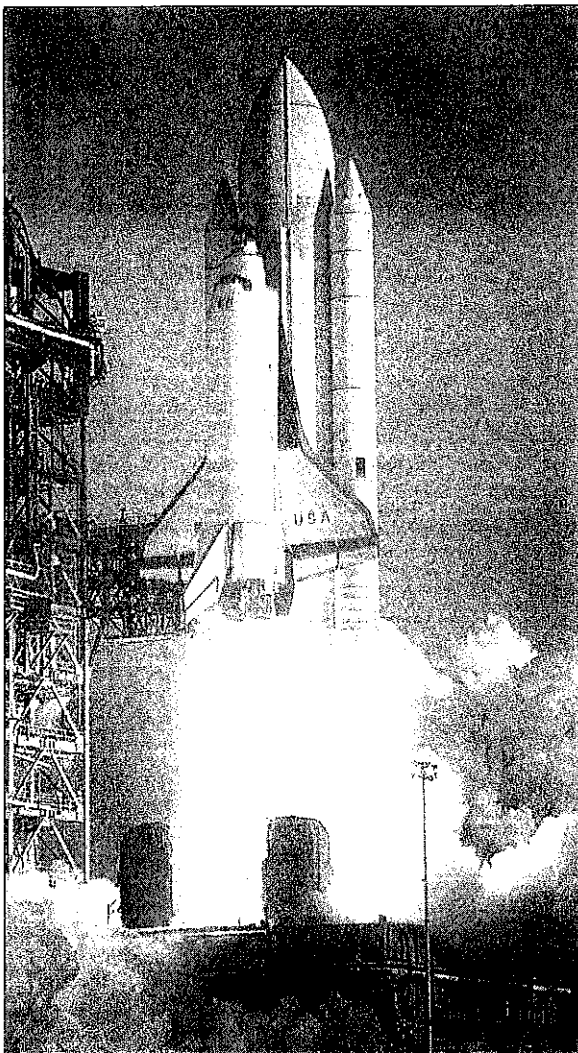
*Elvis Presley was drafted into the Army in 1958. What parts of the Constitution can be used to justify the power of Congress to draft people into the armed forces?*

emergencies. In Latin, **habeas corpus** means to “have the body.” A writ of **habeas corpus** orders government to deliver a person it has arrested to a court of law. Government must explain why that person has been arrested and held. If government cannot show that the person has broken the law, the person must be set free.

- passing **ex post facto** laws. This is a law that makes an act a crime even though the act was legal when it took place.
- passing **bills of attainder**. This is a legislative act that declared a person guilty of violating the law and set the punishment without a court trial.

- taxing anything exported from a state
- taking money from the treasury without first passing a law to do so
- granting titles of nobility

In this way, the Framers tried to balance the need for a strong government with the need to limit its powers. Those limits were included to make sure that government did not become a threat to the people's rights.



*What part of Article I, Section 8 of the Constitution gives Congress the power to conduct a space exploration program?*

## How do the other branches check the power of Congress?

Remember that Congress is divided into two "houses." This arrangement is a check on the power of Congress to pass laws. For example, when the House of Representatives passes a bill, it must be sent to the Senate. The bill must also pass the Senate by a majority vote before it can become law.

The executive and judicial branches also have checks, or controls, on Congress. If a bill passes in both houses of Congress, the bill must be sent to the president for approval and signature. When the president signs the bill it becomes a law.

The president may refuse to sign a bill and send it back to Congress. This is the president's power to veto a bill passed in Congress. When the president vetoes a bill, the bill can only become law if approved by a two-thirds majority in both houses of Congress.

The U.S. Supreme Court has the power to declare a law made by Congress unconstitutional. **Unconstitutional** means that the law or action is not permitted by the Constitution. The Court may say that the Constitution does not give Congress the right to pass such a law. In this case, the law can no longer be carried out or enforced. You will learn more about this power of the U.S. Supreme Court in a future lesson.

## Would these bills be allowed to become law under the Constitution?

A bill is a proposed law. Members of Congress create bills and try to get a majority of both houses to vote for them.

Your class should be divided into congressional committees of about five members each. Complete the following activity and report your findings to the entire class.

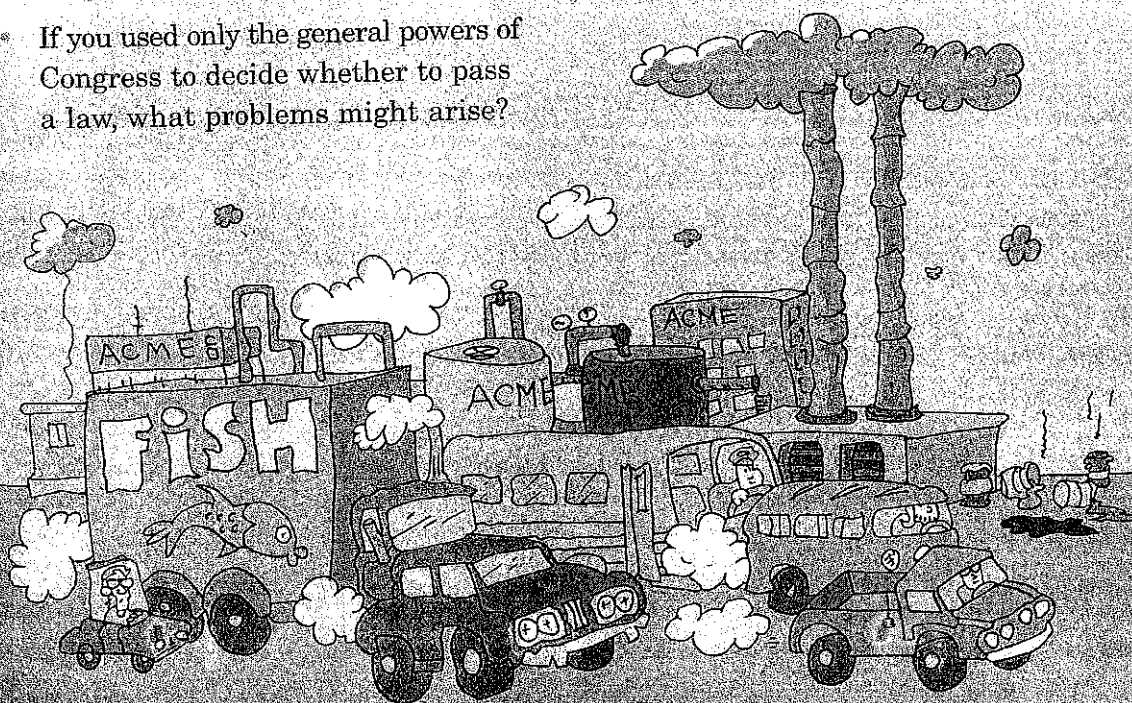
Your committee wants to introduce six bills in Congress. Review the general and enumerated powers granted to Congress. For each bill in the next column identify which of these two types of powers enables Congress to pass it. Support your opinion.

Answer these two questions as part of your discussion:

- \* If you used only the enumerated powers of Congress to decide whether to pass a law, what problems might arise?
- \* If you used only the general powers of Congress to decide whether to pass a law, what problems might arise?

### Bills under consideration to become laws. A law to

- ① allow government to keep watch over websites on the Internet to protect children from potentially harmful material
- ② allow government to draft citizens to serve in the armed forces
- ③ provide money to pay the expenses of the army and navy
- ④ allow the executive branch to conduct a space exploration program
- ⑤ allow government to impose fines as punishment for industries that pollute the air
- ⑥ require government to use tax money to provide medical assistance





## LESSON REVIEW

- ① What disagreements about the powers of Congress did the Framers have? How did they resolve these disagreements?
- ② What enumerated powers does Article I, Section 8 grant to Congress?
- ③ What general powers does Article I, Section 8 grant to Congress? Why are these general powers necessary?
- ④ What limits does Article I place on the powers of Congress? Explain how these limitations protect the rights of citizens.
- ⑤ Explain some ways in which the executive and judicial branches can check the powers of Congress.

## ACTIVITIES

- ① Draw three illustrations. Each one should show how the limits on Congress protect the rights of citizens. Make one illustration focus on a writ of habeas corpus, one on ex post facto laws, and one on bills of attainder.
- ② Article IV gives Congress power to create new states from the territories. Find out how a territory can become a state.
- ③ Sometimes it becomes necessary to make changes to the Constitution. This has happened twenty-seven times in the history of the United States. Read Article V in the Constitution. Explain the process for amending the Constitution.
- ④ Research an attempt to amend the Constitution that failed. Why did it fail? Would it be more successful today? Has the issue that the amendment was meant to correct been addressed in other ways?